

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5626 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H.G. SHAH

Versus

CHARITY COMMISSIONER

Appearance:

Mr. S.R.Brahmbhatt for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/07/97

ORAL JUDGEMENT

Petitioner who was serving as an Accountant in the office of the Public Trust Registration, Junagadh has challenged the order of punishment of compulsory

retirement imposed upon him.

2. On 21st August, 1985, the petitioner rushed to the Chamber of the Assistant Charity Commissioner in his office and abused him in filthy language. A complaint was made against him in this respect and after holding a preliminary inquiry, decision to hold inquiry was taken on 9th April, 1986. A chargesheet was issued on 4th April, 1990 and under order dated 18th January, 1992, petitioner was removed from service. Feeling aggrieved, the petitioner approached the Gujarat Civil Services Tribunal by preferring appeal No. 675 of 1993. Said appeal was decided by the learned Tribunal on 8th June, 1994. The Tribunal confirmed the finding of guilt recorded by the disciplinary authority. However, reduced penalty to that of compulsory retirement. Feeling aggrieved, the petitioner has preferred this petition under Article 226 and 227 of the Constitution.

3. Learned advocate Mr. Brahmbhatt has appeared for the petitioner. He has raised two contentions before me. He has submitted that the incident had taken place on 21st August, 1985 for which a charge sheet was issued after nearly five years i.e. on 4th April, 1990 and inquiry was completed by final order made on 18th January, 1992. Thus, runs the submissions of Mr. Brahmbhatt, the inquiry held against the petitioner is grossly delayed and the delay itself shall vitiate the inquiry. In support of his contention, he has relied upon the judgment of this Court in the matter of Mohanbhai Dungarbhai Parmar versus Y. B. Zala and another [1979 G.L.R. 497]. Mr. Brahmbhatt has also contended that considering the long service rendered by the petitioner and the nature of guilt established against him, punishment of compulsory retirement imposed upon him is too harsh. He has submitted that even if the guilt were held to be established against the petitioner, he could not have been imposed a major punishment. He has relied upon the judgment of this Court in the matter of H.P. Thakore vs. State of Gujarat and others [20 G.L.R. 109] and has submitted that the disciplinary authority has failed to take into consideration several factors which ought to have been taken into consideration before imposing penalty upon the petitioner.

4. Learned advocate Mr. Clerk has appeared for the respondents and has submitted that a proper disciplinary inquiry has been held against the petitioner and all the

principles of natural justice and fair play are scrupulously followed. He has submitted that the contention raised by the petitioner herein has been discussed in details by the Tribunal. The Tribunal, considering the relevant facts, has come to the conclusion that the inquiry was delayed on account of petitioner's noncooperation. It has been observed by the Tribunal that the petitioner went on demanding several documents which were not relevant and went on making aspersions against all the top officers of the establishment which has resulted into delay in the inquiry. He has further submitted that the tribunal has perused the evidence in detail and has recorded finding;

"Be noted that the inquiry officer has considered the evidence and material before him in great details and his assessment of evidence and findings with respect to the charges against the appellant are quite justified."

5. The disciplinary authority as well as the Tribunal both have considered the question of punishment that should be imposed upon the petitioner. Considering the relevant factors and after application of mind, the disciplinary authority has imposed penalty of dismissal from service. Said order has been discussed in detail by the Tribunal. The Tribunal has emphasized the necessity of maintaining discipline in public offices. Considering the nature of guilt established against the petitioner and the long service rendered by the petitioner, the Tribunal has reduced the penalty imposed upon the petitioner to that of compulsory retirement. Mr. Clerk has submitted that in view of the concurrent findings recorded by the disciplinary authority as well as the tribunal, it has got to be held that the imputation of charge made against the petitioner is established. He has submitted that this Court while exercising its jurisdiction under Article 227 of the Constitution, shall neither interfere with the findings recorded by the tribunal nor should it interfere with the punishment imposed by the tribunal. In support of his contentions, he has relied upon the judgments of the Supreme Court in the matter of Khalil Ahmed Bashir Ahmed versus Tufelhussein Samasbhai Sarangpurwala [AIR 1988 SC 184] and in the matter of Venkatlal G. Pittie and another v. M/s. Bright Bros. [Pvt.] Ltd. [AIR 1987 SC 1939]. He has also relied upon the judgment of the Supreme Court in the matter of State Bank of India and others Versus Samarendra Kishor Endow and another [(1994) 2 SCC 537].

6. In the matter of Mohanbhai Dungarbhai [supra], the Court was considering disciplinary action initiated against the delinquent after a year and half regarding remaining absent without leave. The Court held that after such a long period, the delinquent may not remember his whereabouts on the date of incident and, thus, was deprived of fair opportunity to defend himself. The Court, therefore, held that;

"the delay by itself, therefore, will
constitute denial of reasonable
opportunity to show cause. "

7. I am of the view that the above referred judgment shall have no application to the facts of the present case. In the present case, preliminary inquiry was held against the delinquent soon after the date of incident and the statements of the witnesses were recorded in course of preliminary inquiry. Further, the misconduct complained of is not such which can be forgotten in routine course. Besides, Mr. Brahmbhatt has failed to establish that the petitioner's defence has been prejudiced in any manner on account of delay in initiating the inquiry. Moreover, the Tribunal has recorded a finding that the delay has occurred on account of noncooperation on the part of the petitioner. In above view of the matter, I am unable to accept the contention raised by Mr. Brahmbhatt. It cannot be said that the disciplinary action initiated against the petitioner herein is vitiated on account of delay in itself.

8. As far as the quantum of punishment is concerned, on perusal of the order of disciplinary authority, it appears that the disciplinary authority has actively considered the issue before imposing the penalty. Besides, very issue has again been considered by the Tribunal in great details. The Tribunal, having held that the guilt was established against the petitioner, has emphasized upon the maintenance of discipline in the public office. While substituting the punishment by that of compulsory retirement, the Tribunal has taken into consideration long service rendered by the delinquent. In my view, nothing further was required to be done either by the disciplinary authority or by the Tribunal.

Further, in view of the judgments referred to hereinabove relied upon by Mr. Clerk, this Court while exercising its power of judicial review, shall not interfere with the order of the Tribunal which has been made after considering all the evidence on record. I, therefore, do not find any substance in the contentions raised by Mr. Brahmabhatt. Punishment of compulsory retirement imposed upon the petitioner cannot either be said to be harsh or not commensurate with the guilt established against the petitioner.

9. No other contention has been raised before me. Petition is dismissed. Rule is discharged. There shall be no order as to costs.

Vyas